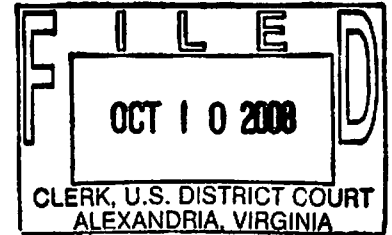


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



MICROSOFT CORPORATION,

Plaintiff,

v.

L&Y ELECTRONICS, INC., *et al.*,

Defendants.

Case No. 1:08cv00596-GBL-JFA

REVISED STIPULATED PROTECTIVE ORDER **WITHOUT SEALING/JSA**
PROVISION

IT IS HEREBY STIPULATED and agreed by and between counsel for the parties that the terms and conditions of this Stipulated Protective Order shall be entered as follows:

1. This Stipulated Protective Order shall be applicable to and govern all depositions, documents produced in response to requests for production of documents, answers to interrogatories, responses to requests for admissions, and all other discovery taken pursuant to the Federal Rules of Civil Procedure, as well as all documents produced by either party in response to informal discovery requests, and testimony adduced at trial, matters in evidence and computerized records (collectively, "RECORDS") which the disclosing party designates as "CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596" or "CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596" hereafter furnished, directly or indirectly, by or on behalf of any party in connection with this action.

2. In designating RECORDS as "CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596" or "CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596," a party shall make such a designation of CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER

PROTECTIVE ORDER 1:08CV00596 only for RECORDS which that party in good faith believes contain trade secret or other confidential research, development and/or commercial information which the party takes appropriate efforts to keep confidential or which the party is otherwise required to keep confidential by agreement or law. For a designation of RECORDS as "CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596," the party must additionally believe in good faith that the RECORDS must be protected from disclosure to the parties themselves in this litigation and must be subject to the restricted disclosure provided for below. CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 and CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 shall be used solely for the purpose of conducting this litigation and not for any other purpose. No RECORDS which evidence the acquisition of Microsoft software and/or components thereof by the defendants, including but not limited to invoices and purchase orders, shall be designated CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596.

3. RECORDS designated as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 may be disclosed only to the following persons:

- a. the attorneys working on this action on behalf of any party, including Microsoft's in-house anti-piracy attorneys;
- b. any paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel;
- c. any parties to this action who are individuals, and the employees, directors or officers of parties to this action who are corporations or partnerships, to the extent necessary to further the interest of the parties in this litigation;

d. any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 3(a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;

e. any witnesses who appear for deposition or trial in this matter, and their counsel of record, during the course of their testimony, upon the witness being advised of the need and agreeing to keep the RECORDS confidential; and

f. the Court.

4. RECORDS designated as "CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596" may be disclosed only to the following persons:

a. the attorneys working on this action on behalf of any party, including Microsoft's in-house anti-piracy attorneys;

b. any paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel, with disclosure only to the extent necessary to perform their work in connection with this matter;

c. any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 4(a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;

d. any witnesses who appear for deposition or trial in this matter, and their counsel of record, during the course of their testimony, upon the witness being advised of the need and agreeing to keep the RECORDS confidential; and

e. the Court.

5. The persons described in paragraphs 3(d) and 4(c) shall have access to the CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL -

ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 once they have been made aware of the provisions of this Order and have manifested their assent to be bound thereby by signing a copy of the annexed "ACKNOWLEDGMENT." A list shall be prepared by counsel for the parties hereto of the names of all such persons to whom CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 is disclosed, or to whom the information contained therein is disclosed, and such list shall be available for inspection by the Court upon request. The other persons described in paragraphs 3 and 4 shall have access to the CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 and CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 pursuant to the terms of this Order without signing a copy of the annexed "ACKNOWLEDGEMENT." The persons receiving CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 are enjoined from disclosing it to any other person, except in conformance with this Order. This Stipulation will not require the disclosure of experts other than by Local Rule, Federal Rule of Civil Procedure, and/or Court Order.

6. Each individual who receives any CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 hereby agrees to subject himself/herself to the jurisdiction of this Court for the purpose of any proceedings relating to the performance under, compliance with or violation of this Order.

7. The recipient of any CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER

1:08CV00596 that is provided under this Order shall maintain such RECORDS in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such RECORDS as is exercised by the recipient with respect to its own proprietary information.

8. Parties shall designate CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 as follows:

a. In the case of RECORDS produced pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, interrogatory answers, responses to requests for admissions, and the information contained therein, designation shall be made by placing the following legend on any such RECORD prior to production: "CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596" or "CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596." In the event that a party inadvertently fails to stamp or otherwise designate a RECORD as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 at the time of its production, that party shall have four (4) business days after discovery of such error to so stamp or otherwise designate the RECORD.

b. In the case of depositions, designation of the portion of the transcript (including exhibits) which contains CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 shall be made by a statement to such effect on the record in the course of the deposition or, upon review of such transcript by counsel for the party to whose CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL -

ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 the deponent has had access, said counsel shall designate within ten (10) days after counsel's receipt of the transcript.

c. Transcripts of depositions will not be filed with the Court unless it is necessary to do so for purposes of trial, motions for summary judgment, or other matters. If a deposition transcript is filed and if it contains CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596, the transcript shall bear the appropriate legend on the caption page and shall be filed under seal.

9. A party shall not be obligated to challenge the propriety of a CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with such designation, such party shall provide to the producing party written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the designation may request appropriate relief from the Court, but in any event, such relief from the Court shall not be requested before ten (10) days after the producing party is served with the required notice. The burden of proving that RECORDS have been properly designated as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 shall be on the party making such designation.

10. ~~The Clerk of the Court is directed to maintain under seal all RECORDS and all transcripts of deposition testimony filed with this Court in this litigation by any party which are,~~

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in whole or in part, designated as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596, including all pleadings, deposition transcripts, exhibits, discovery responses or memoranda purporting to reproduce or paraphrase such RECORDS. The person filing such RECORDS shall designate to the Clerk that all or a designated portion thereof is subject to this Order and is to be kept under seal, except that upon the default of the filing party to so designate, any party may do so. JFA

11. In the event that any CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 is used in any court proceedings in connection with this litigation, it shall not lose its CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 status through such use, and the parties shall take all steps reasonably required to protect its confidentiality during such use.

12. Nothing in this order shall preclude any party to the lawsuit, their attorneys or any other person from disclosing or using, in any manner or for any purpose (a) any RECORDS not obtained in this lawsuit, if such RECORDS are lawfully obtained from a third party, even though the same RECORDS may have been produced in discovery in this lawsuit and designated as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596; (b) RECORDS that are in the public domain at the time of the disclosure; (c) RECORDS that were lawfully possessed by a third party prior to the opening of discovery in this proceeding; or (d) RECORDS disclosed by a third party legally compelled to disclose the information.

13. Nothing in this order shall preclude any party to the lawsuit or their attorneys (a) from showing RECORDS designated as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 to an individual who either prepared or reviewed the RECORDS prior to the filing of this action, or (b) from disclosing or using, in any manner or for any purpose, RECORDS from the party's own files which the party itself has designated as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596.

14. Nothing in this order shall preclude disclosure of any RECORDS if the party designating the RECORDS as CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 consents in writing to such disclosure, or if the Court orders such disclosure.

15. Within sixty (60) days of the termination of litigation and any appeal thereto between the parties, all CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 and CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596, and all copies thereof, except such copies which have been filed with the Court, utilized in accordance with this Order, or which are and will continue to be maintained in a secure place pursuant to the continuing obligations of this Order, shall be returned to the party which produced it or shall be destroyed.

16. Except as specifically provided herein, the terms, conditions and limitations of this Order shall survive the termination of this action at the option of the designating party.

17. This Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions contained herein.

18. Nothing in this Order shall be construed as an agreement or admission that the document, information, or the like is competent, relevant or material. Furthermore, neither the entry into this Order nor the designation of any information or document as "CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596" or "CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596" nor the failure to make such designation shall constitute evidence with respect to any issue in this litigation. Nothing in this order shall prevent a party from using any information that has been designated CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 at trial or any hearing during the course of these proceedings.

Approved as to form and content:

By: 

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Attorneys for Defendants

Dated: 10/7/2008

IT IS SO ORDERED.

October 10, 2008


Hon. John F. Anderson
United States Magistrate Judge
UNITED STATES MAGISTRATE JUDGE

A C K N O W L E D G E M E N T

The undersigned hereby acknowledges that he/she has read the PROTECTIVE ORDER which was entered by the Court on _____, 2008 in Microsoft Corp. v. L&Y Electronics, Inc., et al., Case No. 1:08cv596 (GBL/JFA) that he/she is one of the persons contemplated in paragraph 3 and 4 thereof as authorized to receive disclosure of RECORDS designated CONFIDENTIAL UNDER PROTECTIVE ORDER 1:08CV00596 or CONFIDENTIAL - ATTORNEYS ONLY UNDER PROTECTIVE ORDER 1:08CV00596 by any of the parties or by third parties, and that he/she fully understand and agrees to abide by the obligations and conditions of the Protective Order. The undersigned further consents to be subject to the jurisdiction of the United States District Court for the Eastern District of Virginia for purposes of any proceedings relating to performance under, compliance with or violation of the above-described Order.

Dated: _____, 200__